



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,614	03/08/2001	Gerald Francis McBrearty	AUS9-2000-0935-US1	5324
7590 12/26/2007 International Business Machines Corporation Intellectual Property Law Department Internal Zip 4054 11400 Burnet Road Austin, TX 78758			EXAMINER DENNISON, JERRY B	
			ART UNIT 2143	PAPER NUMBER
			MAIL DATE 12/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/801,614

Applicant(s)

MCBREARTY ET AL.

Examiner

J. Bret Dennison

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,7,10,13,14,17,20 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,7,10,13,14,17,20 and 31-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Action is in response to the Amendment for Application Number 09/801,614 filed 12 October 2007.
2. Claims 1, 4, 5, 7, 10, 13, 14, 17, 20, and 31-35 are presented for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 7, 10, 14, 17, 31 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Winburn (U.S. 2002/0069363).

3. Regarding claims 1, 5, 7, 10, 14, 17, 31 and 33, Winburn disclosed, in a data processing operation having stored data in a plurality of data files, a system (Winburn, Fig. 1, system 10) for protecting said data files from unauthorized users comprising:

means for storing for each of said plurality of data files, a backup file inaccessible to user requests (Winburn, [0026], Winburn disclosed an authentic backup file, with its identity and location camouflaged to remove any direct relation between any of the attributes of the authorized protected data file and the corresponding authentic backup file);

means for receiving user requests for access to data files (Winburn, [0025], Winburn disclosed user accesses to authorized protected data files);

means for determining, without accessing any of said backup files (Winburn, [0008], Winburn disclosed "an identifier is stored and used to test the content of the current protected data file to determine if the current protected data file is the same as the authorized protected data file or has been changed without authorization", which **clearly indicates that the identifier is used for determining, not the backup file**), whether said requests are unauthorized intrusions into said requested data files (Winburn, [0030], Winburn disclosed, in response to a sensed event, checking the protected data file to see if it has been changed without authorization, thereby determining if a user access/request was unauthorized);

means responsive to an initial determination that a request is unauthorized for destroying the requested data files (Winburn, [0026], Winburn disclosed reconstructing the last authorized copy of the protected file into the protected file, which requires destroying the previous tampered file, i.e. it no longer exists; Fig. 7, 69, Winburn disclosed "delete compromised current protected data file); and

means for reloading a backup file for each destroyed file (Winburn, [0026], Fig. 6, 61, Winburn disclosed recovering the authentic backup and restoring the authorized protected data file; Fig. 7, Winburn disclosed "Write restored authorized protected data file" by clearly using the backup file).

Claims 5 and 7 include a system with limitations that are substantially similar to claim 1, including use in business transactions, including "e-commerce" which inherent

to include web sites (see Guheen U.S. 7,165,041). Claims 10, 14, and 17 include a method with limitations that are substantially similar to claim 1. Claims 21, 25 and 27 include a computer program (Winburn, [0032]) with limitations that are substantially similar to claim 1. Claims 31 and 33 include a computer-readable medium with limitations that are substantially similar to claim 1. Figure 8 of Winburn shows many examples of computer readable media. Therefore, claims 5, 7, 10, 14, 17, 31 and 33 are rejected under the same rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 13, 20, 32, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winburn (U.S. 2002/0069363) in view of Moran (U.S.6,647,400) and Koelle et al. (U.S. 7,150,045).

4. Regarding claims 4, 13, 20, 32 and 35, Winburn disclosed the limitations, substantially as claimed, as described in claims 1, 10, 17, 31 and 33. Winburn also disclosed detecting unauthorized access of data without authority into a data system (Winburn [0002]), and checking the protected data file to see if it has been tampered in response to a sensed event (Winburn, [0030]).

Therefore, while Winburn disclosed detecting unauthorized accesses based on sensed events, Winburn did not provide explicit examples of sensed events that would trigger the system to check for such unauthorized access/tampering of the files.

This would have motivated one of ordinary skill to search the prior art for well-known triggers that identify unauthorized accesses into a system.

In analogous art, Moran disclosed different intrusion detection triggers including password-guessing attacks (Moran, col. 24, lines 40-45), and Koelle disclosed detection of unauthorized client behaviors including unauthorized copying of protected data (Koelle, see Abstract).

Winburn suggests detecting unauthorized intrusions into the system. Moran and Koelle provide explicit examples of well-known intrusion detection techniques. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the techniques of Moran and Koelle into the system of Winburn in order to provide a system that is more secure to attacks from unauthorized users for the benefit of providing a more reliable system.

5. Regarding claim 34, Winburn disclosed the limitations as described in claim 33. Winburn also disclosed a use for the invention to be with "e-commerce transactions."

Winburn did not explicitly state wherein the network is the World Wide Web and said network sites are Web sites.

However, maintaining security and protecting from intrusion into hosts of websites on the World Wide Web was well known in the art at the time of the invention.

Therefore, since the teachings of Winburn disclosed techniques for protecting against intrusion, then one of ordinary skill in the art would have been motivated to use the teachings of Winburn to maintain security on websites on the World Wide Web. In addition, Winburn disclosed a use for the teachings to be through "e-commerce". One example of "e-commerce" that was well known before the invention was made is Ebay.com, which is clearly an e-commerce website on the World Wide Web. As such, it would have been obvious for one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Winburn into a website on the World Wide Web for the purpose of increasing security on websites such as Ebay.com to prevent intruders from making falsifying e-commerce transactions.

Response to Amendment

Applicant's arguments and amendments have been carefully considered but they are not deemed fully persuasive.

Applicant argues, "Winburn fails to teach the element of determining, without accessing any of said backup files, whether said user requests are unauthorized intrusions into said requested data files." [see Applicant's Remarks, page 11].

Applicant asserts, "Winburn merely compares his active data files to their corresponding backup files." [see Applicant's Remarks, page 11].

Examiner respectfully disagrees.

As shown in the above rejection, Winburn uses an identifier for this determination. The identifier is "stored and used to test the content of the current protected data file to determine if the current protected data file is the same as the

authorized protected data file or has been changed without authorization" (Winburn, page 2 [0008]).

Winburn further states "Where the comparison of the identifier and test identifier indicates a difference in protected data file content, an indication of an unauthorized modification is produced **and in response to that indication, the authentic backup file is retrieved to restore the authorized protected data file.**" (Winburn, page 2, [0008]) Therefore it is crystal clear that the backup file is not accessed for determining if an unauthorized intrusion took place, but rather is **only accessed after the determination is made** that an intrusion occurred, in order to restore the file.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures

may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

Application/Control Number:
09/801,614
Art Unit: 2143

Page 9

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. B. D.
Patent Examiner
Art Unit 2143


SUPERVISOR
NATHAN FLYNN
PATENT EXAMINER